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February 3, 2017

**VIA ELECTRONIC MAIL**

Andrew Deeringer  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor  
Sacramento, CA 95814

**Re: The Morning Star Tomato Packing Plant, Colusa County; Consideration of a  
Resolution Rescinding Administrative Civil Liability Order R5-2016-0008**

Dear Mr. Deeringer:

Thank you for the opportunity to provide comments regarding the Central Valley Regional Water Quality Control Board's ("Board") consideration of a resolution rescinding Administrative Liability Order R5-2016-0008 ("ACL"), which is scheduled for the Board's February 23/24 meeting. The Morning Star Packing Company, L.P. ("Morning Star") supports rescission of the ACL based, in part, on the additional evidence that was in the Board's files, but was not presented to the Board for consideration at the time of the original February 18, 2016 ACL hearing. As Morning Star has repeatedly stated, Morning Star personnel advised Board staff of the expansion of both the cooling pond and the settling pond as confirmed in Exhibit A to the Tentative Resolution.

The question whether Morning Star communicated with Board staff regarding expansion of the ponds was a primary issue during the 2016 hearing. In particular, Board member comments at the 2016 hearing included the following: "[W]hen the staff came out to do an inspection ... [t]here was no reporting of either one of these ponds." (February 2016 Hearing Transcript ("Transcript") at 75:19-21 (Board Member Kadara)); "...[T]o not be touching bases with staff as you move that forward, I just haven't seen anything quite egregious as this ..." (*id.* at 77:9-10 (Board Member Schneider)).<sup>1</sup>

These Board Member comments were based on the Prosecution Team's representations that Morning Star had failed to inform staff of its plans. (*See, e.g.*, Transcript at 6:17-22 ("Morning Star did not submit an addendum to its report or waste discharge or otherwise notify Staff ... Morning Star

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<sup>1</sup> *See also*, "I do feel that with proper communication, it could have been incorporated into the permit so that we wouldn't be here today..." (Transcript at 77:28 - 78:1 (Board Chair)); "You are supposed to be providing accurate information to the staff for them to actually be able to issue you the proper permits..." (*id.* at 75:25-26 (Board Member Kadara)); "I still can't believe that you know you could double your, or 65% bigger, the pond, the settling pond and never touch bases with the board. To me that, at some point, it's reasonable that you should have." (*id.* at 76:17-19 (Board Member Costantino)).

ignored the basic requirement to inform the board ...”); *id.* at 12:6-12, citing Prosecution Team Exhibit 60 (“[Lani Andam] states that at no time did Morning Star provide any information regarding expanding the cooling pond or reducing the cropland”).<sup>2</sup>

In fact, the information in Exhibit A to the Tentative Resolution confirms otherwise. (Exhibit A to Tentative Resolution: Letter from Lani Andam to Ross Oliveira re Site Visit and Revised Waste Discharge Requirements Discussion (Sept. 13, 2012) at p. 2 (emphasis added) (“Morning Star staff mentioned [to Lani Andam] that there are plans to expand the existing facility to include a bulk diced operation. **Expansion would include increasing the Cooling Pond capacity and reducing the available land application areas.**”); Letter from Siegfried to Central Valley Regional Water Quality Control Board re NPDES Compliance for Morning Star Processing Plant in Williams, CA (Nov. 19, 2012) at p. 1 (emphasis added) (“Recently, our office designed and **Morning Star constructed an expansion to the Settling Pond.**”).)

Whether the omission of these documents from the administrative record in 2016 was inadvertent or purposeful, Morning Star appreciates the Board’s recognition that these documents are relevant, and the Board’s decision to take proactive steps to ensure that its decisions are procedurally fair, equitable and based on a complete administrative record. It is notable that during the 2016 hearing, Morning Star presented the information contained in the additional evidence.<sup>3</sup> However, Morning Star was met with skepticism and questions about its credibility.<sup>4</sup> Morning Star is hopeful that measures will be taken to ensure that record discrepancies like those that occurred in the ACL

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<sup>2</sup> See also, Attachment A to ACLC R5-2015-0549 at pp. 6-7 (citing “negligent behavior”; stating Morning Star “demonstrated a complete disregard for the Board’s regulatory process prior to making material changes to its operations”); Prosecution Team’s Legal and Technical Analysis at pp. 3, 4 (“at no time during that process did it memorialize those intentions”; Morning Star “should have known that such modifications needed to be, at the very least, communicated to Board staff”; “Morning Star never apprised Board permitting staff about the Cooling Pond expansion and LAA reduction”); Transcript at 12:16-18 (“Morning Star was obligated to disclose the proposed changes to the wastewater system. If they had done so, the permit would have included this information.”); *id.* at 13:7-8 (“Morning Star never informed her that the settling pond had been expanded”); *id.* at 13:17 (“Morning Star never memorialized these intentions”).

<sup>3</sup> (See, e.g., Discharger’s Legal, Policy and Technical Statement at pp. 3, 4-5; Transcript at 52:22-23 (“But we proactively informed the Board of the expansion.”); *id.* at 27:3-12 (“What Morning Star told the permitting team was that it intended to expand its processing operations. The cooling pond is part of the cooling process for the processing operations. Morning Star... fully intended to be communicating to the permitting staff that they were expanding their processing operations, including their cooling facility. Staff modified that language in the WDRs which has apparently created some confusion about what was and wasn’t authorized in the WDRs but it was always Morning Star’s intent that the cooling process would also be expanded as part of the expansion of the processing operations.”); February 2016 Morning Star Presentation at slides 10-12.)

<sup>4</sup> See, supra, Transcript at 75:19-21, 75:25-26, 76:17-19, 77:9-10, 77:28 - 78:1; see also, Transcript at 75:9 (“And you can blame staff, but you are the discharger, you have a responsibility.”); *id.* at 76:5; *id.* at 77:25-27 (I do think it was very egregious and I do think sir that you are very innovative but you need to develop bounds.”); *id.* at 74:16-17 (“But it was still the burden of the discharger to let us know.”).

proceeding do not occur in future proceedings, and that future dischargers will not face similar circumstances.

Morning Star also feels strongly that the additional documents significantly undermine the allegations in the original ACL Complaint. On that basis and to avoid any further investment of resources on this matter, we urge the Board to exercise its discretion and decline to direct Prosecution Staff to issue a hearing notice for reconsideration of the ACL. Morning Star has endured significant costs (Transcript at 53:13-14 (“I hazard a guess of about a quarter million dollars in legal and engineering consulting time ....”)) and adverse publicity related to the original ACL proceedings. Specifically, Morning Star’s business reputation and goodwill have been adversely impacted by the negative publicity associated with the Board’s approval of the ACL. For example, the Board’s press release for the ACL included inflammatory comments and incorrect information: “When a discharger chooses to mislead our staff in this way, we are unable to assure that their practices will be protective of water quality.”<sup>5</sup>

The Board and staff have also invested significant time and resources on this matter and continued efforts related to the ACL provide no benefit to water quality<sup>6</sup>, the environment, or the public interest. Further investment related to Morning Star’s operation is best directed at the efforts to collect data and develop new Waste Discharge Requirements (“WDRs”) over the next few years, as contemplated by Finding 99 of Cease and Desist Order No. R5-2016-0007.<sup>7</sup>

Morning Star takes seriously its responsibility to be a steward of the environment. Morning Star will continue to communicate regularly with Board staff to ensure compliance with orders, as well as accurate exchange of data and information. In order for a collaborative process to occur, staff must reciprocate Morning Star’s efforts rather than undergo further adversarial process. Following rescission of the ACL, Morning Star looks forward to continuing a productive dialog with staff regarding data and information to ensure continued protection of water quality and to support the eventual development of revised WDRs.

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<sup>5</sup> “Morning Star Packing Company Issued \$1.5 Million Penalty, Cease and Desist Order for Wastewater Violations”, Central Valley Regional Water Quality Control Board Enforcement News, Feb. 22, 2016, [http://www.waterboards.ca.gov/centralvalley/press\\_room/announcements/press\\_releases/pr022216\\_r5\\_morningstar.pdf](http://www.waterboards.ca.gov/centralvalley/press_room/announcements/press_releases/pr022216_r5_morningstar.pdf). The press release also referred to a discharge of 266 million gallons of wastewater, while the ACL cited to approximately 27 million gallons.

<sup>6</sup> Discharger’s Legal, Policy and Technical Statement at pp. 5-6, 7, 8, 9, 11; Discharger’s Exhibits K, M, N.

<sup>7</sup> “It is the intent of this Order to provide the Discharger with a choice ... by either ... (b) continuing to operate the Facility as-built ... with limitations to protect water quality and requirements to collect the data necessary to submit a new ROWD to revise the WDRs. Due to the seasonal variability of Morning Star’s operations, it is anticipated that three years of data collection would be needed before morning Star would submit a Report of Waste Discharge and apply for revised WDRs....”

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Very truly yours,



Kristen T. Castaños

cc: Pamela Creedon  
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